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**SUPREME COURT  
OF THE UNITED STATES**

**OCTOBER TERM, 1943**

**419**  
No. ....

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**AUGUSTUS E. STALEY, JR.,** Executor of the Last Will and  
Testament of Augustus E. Staley, Sr., deceased,  
*Petitioner and Appellant below,*

**versus**

**COMMISSIONER OF INTERNAL REVENUE,**  
*Respondent and Appellee below.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

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**CHARLES C. LEFORGEE,**  
*Counsel for Petitioner*  
Decatur, Illinois



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To the Honorable Harlan Fisk Stone, Chief Justice of the  
United States and the Associate Justices of the Supreme  
Court of the United States:

Your petitioner respectfully shows:

I

## SUMMARY STATEMENT OF MATTER INVOLVED

This proceeding involves a deficiency tax of \$79,300.00  
in the Income Tax liability of Augustus E. Staley, Sr. (now  
deceased) for the calendar year of 1935. The deficiency

tax was upheld by a divided court in the Circuit Court of Appeals for the Fifth Circuit. (Transcript of Record, pages 163-167). Copy of opinion of said Circuit Court of Appeals attached hereto as Appendix 1.

The transaction out of which the deficiency tax was fixed was admittedly in good faith without claim that any of the interested parties contemplated any attempt to evade or defeat the provisions of any Revenue Acts of the United States.

In 1927 Mr. A. E. Staley, Sr., announced that he would transfer to each of his five children certain shares of stock in the A. E. Staley Manufacturing Company. (Transcript of Record p. 118). For various reasons the transfers were delayed until 1934. The stock originally intended to be transferred as a gift was 5,000 shares of common stock and 1,000 or 2,000 shares of preferred stock in the above mentioned corporation. In 1934 Mr. Staley, Sr., lacked approximately \$150,000.00 to pay the gift tax on said contemplated gifts as estimated by auditors and tax advisers. He negotiated with bankers and brokers to sell 5,000 shares of stock to cover the deficit for the payment of the gift tax. The negotiations developed prices which he regarded as entailing a large financial loss which he declined to accept. Desiring to consummate the stock transfers Mr. Staley proposed to the trustees and beneficiaries that the transfer be for 6,000 (instead of 5,000) shares of common stock for the benefit of each of the beneficiaries and 2,000 shares of preferred stock for a consideration of \$30,000.00 as to each of the trusts or a total of \$150,000.00. This consideration was to be paid to Mr. Staley, Sr., by the Trustee out of trust income from any future dividends which might be declared upon all of the stock so severally transferred in trust. The beneficiaries did not have the funds with which to pay

the \$30,000.00 consideration for each trust. (Transcript of Record, p. 121).

All of the children (beneficiaries) had attained their legal majority, they were residing separate and apart from their parents and there was no liability upon the part of Mr. Staley, Sr., to support the beneficiaries or in any manner pay or contribute any sums of money or property to either of them. (Transcript of Record, p. 117-118).

In October, 1934, Mr. Staley, with the assistance of his counsel, his son, Augustus E. Staley, Jr., and the representatives of the Safe Deposit and Trust Company of Baltimore, Maryland (the proposed Trustee) prepared, executed and delivered the trust instruments, and he concurrently transferred to the Trustee for each of his five children the above specified shares of stock. (Transcript of Record, p. 121).

There were five separate instruments, identical in form except as to the name of beneficiary. The trust instruments named the Safe Deposit and Trust Company of Baltimore, Maryland, Trustee, and Augustus E. Staley, Jr., as Co-Trustee. The trust instruments, so far as now material, contained the following provisions:

"This trust agreement made this 18th day of October, 1934, by and between Augustus E. Staley, hereinafter called Donor, party of the first part, and the Safe Deposit and Trust Company of Baltimore, (a Maryland corporation), hereinafter called Trustee, and Augustus E. Staley, Jr., of Decatur, Illinois, hereinafter called Co-Trustee, the parties of the second part.

**"WITNESSETH:**

That, whereas, the Donor has assigned, transferred and delivered to the Trustee the property described in the schedule hereto attached and made a part hereof and entitled 'Schedule of the Property

of the Augustus E. Staley trust,' (hereinafter called trust estate), in trust, however, for the uses and purposes in this instrument set forth and stated.

"NOW, THEREFORE, *for and in consideration* of the sum of Thirty Thousand Dollars (\$30,000.00) to be paid to the Donor, as provided in ARTICLE THIRD, and certain other good and valuable consideration paid by the parties hereto each to the other, receipt of which is by them now severally acknowledged, and in further consideration of the covenants in this instrument to be by said parties respectively kept and performed, it is hereby agreed:" (Transcript of Record, p. 11).

ARTICLE THIRD of each of said trust instruments provided for the payment of the expenses of the trust and the trustees' commissions and thereafter provided the method of paying the \$30,000.00 consideration to Mr. Staley, Sr., as follows:

"(c) After the Trustee has made the payments in (a) and (b) of this ARTICLE THIRD hereof mentioned the Trustee shall out of the income by it received up to and including March 15, 1935, pay to the Donor the entire income by it received out of said trust estate, *in satisfaction of the consideration of Thirty Thousand Dollars (\$30,000.00)* as hereinbefore provided, but in no event shall such payment to the Donor exceed the sum of Thirty Thousand Dollars (\$30,000.00).

"After March 15, 1935, the said Trustee shall distribute the income from the said trust estate in the following manner:

"(1) After the payment of (a) and (b) (expenses and Trustee's Commissions) aforesaid it shall pay to (named child of Mr. Staley, Sr.) out of the income of said trust estate the sum of Five Thousand



Dollars (\$5,000.00) per annum accounting from March 15th, 1935, all payments of said \$5,000.00 shall be paid in such installments as the Trustee shall deem practicable and all sums annually received as income by said Trustee in excess of said annual payments of \$5,000.00 per annum shall be by said Trustee annually paid to the Donor until the total sum of said Thirty Thousand Dollars (\$30,000.00) has been paid to the said Donor." (All italics in above quotation are not so emphasized in the originals). (Transcript of Record, pages 13-14).

Provisions in said trust instruments further provided for the creation of a fund out of subsequent income to insure to each of said children an annuity of \$5,000.00 a year after the payment of the named consideration to Mr. Staley.

The trusts were irrevocable and the stock passed out of Mr. Staley's hands by transfer to the Trustee and he was thereafter without control of the same. The trusts extended for a period not longer than 20 years after the death of a deceased child. (Transcript of Record, p. 11-21).

Dividends were declared by the Company in January and February, in 1935, which dividends upon the stock so transferred by Mr. Staley, Sr., was paid to the Safe Deposit and Trust Company of Baltimore, Trustee. The trustee, out of trust income, paid to Mr. Staley, Sr., the \$30,000.00 "consideration" named in each of the instruments or a total of \$150,000.00. (Transcript of Record, p. 58).

The Safe Deposit and Trust Company, as Trustee, filed fiduciary returns of income for 1935 disclosing in each instance a retained income of \$39,158.54 and a tax liability of \$4,674.45 and said taxes were tendered to the Collector in Baltimore, Maryland. (Transcript of Record, p. 144.)

In March, 1935, Mr. Staley, Sr., filed his income tax

return for 1934 but did not report the sum of \$150,000.00 as income. (Exhibit "C"—Transcript of Record, p. 100-101).

In March, 1935, Mr. Staley, Sr., filed a gift tax return for the year 1934, then paying to the Collector of Internal Revenue a gift tax of \$235,828.75. (Exhibit "E"—Transcript of Record, p. 106-107).

Upon a decision and finding adverse to Mr. Staley, Sr., before the Board of Tax Appeals the case was taken to the United State Circuit Court of Appeals in the Fifth Circuit where, by a divided court, the decision of the Board of Tax Appeals was sustained. The majority opinion as well as the dissenting opinion are filed herein. (Transcript of Record, pages 163-167). (See also Appendix 1.)

# JURISDICTION

1. This cause involves a substantial controversy and presents a justiciable issue.

2. This is a petition for a writ of certiorari to review the finding, decision and order of affirmance by the United States Circuit Court of Appeals in the Fifth Circuit and in conformity with the Federal Statutes.

3. The Circuit Court of Appeals has exclusive jurisdiction to review decisions of the Board of Tax Appeals and its judgment shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari.

26 U. S. C. A. Chap. 5, Sec. 1141.

4. Certiorari is the only method allowed by statute to have a review of a decision of the Circuit Court of Appeals involving any question except repugnancy of a state statute.

28 U. S. C. A., Chap. 9, Sec. 347.

*Public Service Commission of Indiana v. Batesville Telephone Company*, 284 U. S. 6.

The judgment of the Circuit Court of Appeals was entered June 15, 1943. (Transcript of Record, page 168).

An order was entered on June 30, 1943, extending the time for filing a petition for rehearing until July 16, 1943. (Record Page 169).

A petition for rehearing before the United States Circuit Court of Appeals for the Fifth Circuit was filed on July 8, 1943. (Record Page 170).

An order denying the petition for rehearing was entered July 17, 1943. (Record Page 174).

This petition for certiorari is presented within the time fixed by the rules of this court.

28 U. S. C. A., Chap. 9, Sec. 350.

*National Labor Relations Board v. Mackay  
Radio and Telegraph Co.*, 304 U. S. 333.

## III

**QUESTIONS PRESENTED FOR THE CONSIDERATION OF  
THIS PETITION****A. RELATING TO THE PROPRIETY OF GRANT-  
ING A WRIT OF CERTIORARI.**

1. Has the Circuit Court of Appeals for the Fifth Circuit rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter?
2. Has the Circuit Court of Appeals for the Fifth Circuit decided an important question of Federal Law which has not been, but should be, settled by the Supreme Court of the United States?
3. Has the Circuit Court of Appeals for the Fifth Circuit decided a Federal question in a way probably in conflict with applicable decisions of the Supreme Court of the United States?
4. Has the Circuit Court of Appeals for the Fifth Circuit so far departed from the accepted and usual course of Federal judicial decisions as to call for the exercise of the Supreme Court of the United States of its power of supervision?
5. Was the decision herein by the Circuit Court of Appeals in the Fifth Circuit the fixation of a tax by Court construction in excess of specific provisions of the Revenue Act of 1934?
6. May the courts, by construction, retroactively extend the provisions of a clear, well defined legislative act fixing the power of taxation?

**B. RELATING TO THE MERITS.**

1. Was the sum of \$150,000.00 (being a total of the \$30,000.00 payments made in each of the five trusts) "*income*" under the provisions of the Revenue Act of 1934?

2. Was the \$150,000.00 paid to Mr. Staley, Sr., in 1935 a return and restoration to him of invested capital?

3. Do the five written trust instruments stating a consideration of \$30,000.00 each create a contractual debt or obligation which the Trustee was bound to pay and discharge?

## REASONS RELIED ON FOR ALLOWANCE OF THIS PETITION

### A. CERTIORARI SHOULD BE GRANTED.

1. The Circuit Court of Appeals for the Fifth Circuit in the case at bar has rendered a decision in conflict with the decisions of other Circuit Courts of Appeal on the same matter; i. e., the Circuit Court of Appeals for the Eighth Circuit in *Curran v. Commissioner of Internal Revenue*, 49 Fed. (2d) 129, and the Circuit Court of Appeals for the Second Circuit in *Robert Hoe Estate Co., Inc., v. Commissioner of Internal Revenue*, 85 Fed. (2d) 4. (See Point 1 Brief).
2. The Circuit Court of Appeals for the Fifth Circuit has decided an important question of Federal Law which has not been, but should be, settled by the Supreme Court of the United States.
3. The Circuit Court of Appeals for the Fifth Circuit has decided a Federal question in a way probably in conflict with applicable decision of the Supreme Court of the United States in *Helvering v. Falk*, 291 U. S. 183. (See Point 2 Brief).
4. The Circuit Court of Appeals for the Fifth Circuit has so far departed from the accepted and usual course of Federal judicial decisions as to call for the exercise by the Supreme Court of the United States its power of supervision.
5. The importance of the question involved in the administration of the Revenue laws of the United States.
6. The Circuit Court of Appeals for the Fifth Circuit,

has by construction, retroactively extended the provisions of a clear well defined legislative act fixing the power of taxation in conflict with and condemned by the decision of the Supreme Court of the United States in *Helvering v. Griffiths*, 317 U. S. . . . . ; 87 L. ed. 597; 63 S. Ct. 636. (See Point 3 Brief).

## B. THE CAUSE SHOULD BE REVERSED ON THE MERITS.

1. Income as defined in Section 22(a) of the Revenue Act of 1934 cannot be extended to cover the consideration for the Trusts involved. (See Point 4 Brief).

2. The transaction here involved does not apply to "income" as defined in Section 161 of the Revenue Act of 1934. The sum by the taxpayer received was not "income" accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, nor

(a) was it "*income*" accumulated or held for future distribution under the terms of the trust, nor

(b) was it "*income*" to be distributed currently by the fiduciary to the beneficiaries, nor

(c) was it "*income*" received by the estate of a deceased person during a period of administration, nor,

(d) was it "*income*" to be distributed in the discretion of the fiduciary.

The rule is mandatory that the tax shall be computed upon the net income of the trust "*and shall be paid by the fiduciary*" except as provided in Sections 166 and 167.

3. Section 166 of said Act has no place here for it



relates to revocable trusts. The Staley Trust is irrevocable.

4. Section 167 of the Revenue Act of 1934 has no application in the submitted case for no part of the income of the trusts was:

(a). in the discretion of the grantor or of any persons not having a substantial adverse interest held or accumulated for distribution to the grantor; or

(b). in the discretion of the grantor or of any person not having a substantial adverse interest to be distributed to the grantor; or

(c). in the discretion of the grantor or of any person not having a substantial adverse interest to be applied to the payment of premiums upon policies of insurance on the life of the grantor.

The sum contracted and agreed to be and which subsequently was paid to Mr. Staley, Sr., was not to be paid to him in the "discretion" of anyone. It was a fixed, definite and certain sum to meet and discharge an obligation and debt fixed in and created by and at the time of execution of the trust instruments. It was an obligation and debt which the Trustee became and was bound to discharge. Had the taxpayer sold 1,000 shares of stock to third parties and from funds so received paid the gift tax, the question of income would never have arisen. (See point 5 Brief).

5. The transfer by the grantor to the Trustee was for a valuable named consideration and the payment of this consideration by the Trustees to the grantor was not income to the grantor, Mr. Staley, Sr.

6. The \$150,000.00 consideration paid to the grantor, Mr. Staley, Sr., by the Trustee was a return and restoration of capital. (See point 6 Brief).

7. The \$150,000.00 received by Mr. Staley, Sr., in 1935 was a named consideration for the consummation of a certain transaction. When a consideration is so named in the instrument, the words must have the sense in which the parties understood them. (See point 7 Brief).

8. The trust instruments were contracts and it is the duty of the courts to enforce them and the intention of the parties when it is ascertained and such intention will be enforced by the courts however inartificially expressed. (See point 8 Brief).

9. The contracts expressly named a "consideration". It was the moving cause for the transactions. If it was the moving cause (and admittedly there was no gain or profit to the taxpayer) it could not, under the Revenue Act of 1934 or the decisions of the Federal Courts be regarded or held to be income for which the taxpayer should make a return.

10. The taxpayer had the right to exact and provide for the payment of a consideration to be to him paid for the creation of the trusts and agreement by the Trustee and beneficiaries to so pay the same constituted a lawful contract and in the absence of a gain or profit to the taxpayer the receipt of the consideration cannot be held to be income. (See point 9 Brief).

11. The intent of the parties is expressed and must be enforced although inartificially expressed.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the decree of the Circuit Court of Appeals for the Fifth Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CHARLES C. LEFORGEE,  
*Counsel for Petitioner.*